

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

Applicant : Benjamin Englander
Application No. : 09/757,130 Confirmation No. : 6441
Filed : January 9, 2001
For : ANTI-GLARE VEHICULAR MIRROR
Group Art Unit : 2872
Examiner : Thong Q. Nguyen

Commissioner for Patents
P.O. Box 1450
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DECLARATION UNDER 37 C.F.R. § 1.132

I, Benjamin Englander, declare as follows:

1. I am the named inventor of the above-identified patent application.
2. I received my Bachelor of Science degree in Mechanical Engineering in 1988 from Columbia University. I received my Master's Degree in Mechanical Engineering in 1991 from Columbia University.
3. I am also the Vice President of Engineering for the assignee of the patent application, Rosco, Inc. Rosco is one of North America's leading suppliers of mirrors, visors and other visual safety systems to the worldwide commercial vehicle market. Rosco has been in business for over 100 years. Rosco is the largest supplier of mirror systems to the North

American school bus market. At Rosco, I am responsible for all aspects of engineering, manufacturing, and sales of Rosco's products.

4. Rosco sells cross-view mirrors with and without anti-glare tint on the upper area of the mirror. An example of a Rosco cross-view mirror that does not include a tint is Rosco's standard Hawkeye mirror, selling under part numbers 2365 and 3365. An example of a Rosco cross-view mirror that does include an anti-glare tint is Rosco's tinted Hawkeye mirror, selling under part numbers 2365T and 3365T.

5. Rosco's tinted Hawkeye mirror has been on the market since 2001. It is my opinion that based on my discovery of the possible glare that could result with a cross-view mirror that does not include anti-glare tint, Rosco's tinted Hawkeye mirror satisfied a significant need in the market for a mirror that allowed for wide-angle viewing of the area around a school bus, while at the same time reducing glare for the driver of the school bus.

6. Since the tinted Hawkeye mirror's introduction to the market in 2001, Rosco has enjoyed significant commercial success, making a total of approximately \$5.5M in sales from the mirror. The number of units sold (to the nearest 1,000) from 2001 through 2008 for Rosco's tinted Hawkeye mirror, part numbers 2365T and 3365T, are as follows:

| Year | Units Sold |
|-------------|-------------------|
| 2001 | 15,000 |
| 2002 | 22,000 |
| 2003 | 23,000 |
| 2004 | 19,000 |
| 2005 | 23,000 |
| 2006 | 23,000 |
| 2007 | 25,000 |
| 2008 | 27,000 |

7. I indicated in a letter dated July 9, 2008, submitted with the July 11, 2008 Supplemental Amendment in this patent application, that on information and belief, almost every one of the mirrors that we have sold has been installed on our customers' buses and are in use. (See Exhibit A). I also indicated that I have personally installed many of these mirrors at various customer facilities during demonstrations and have personally seen the mirrors in use by Rosco's customers throughout North America. (See *id.*).

8. Two letters from Rosco's customers were also submitted with the July 11, 2008 Supplemental Amendment in this patent application: a letter from Michael Costello, General Manager of M & E Sales LLC, and a letter from Patricia Allrid, a former Corporate Purchasing Agent of Bluebird Corporation. (See Exhibits B and C, respectively). Both Mr. Costello and Ms. Allrid have purchased cross-view mirrors treated with the anti-glare material of the present invention. Mr. Costello indicates that his company has purchased over 175 mirrors having the anti-glare material of the present invention. (See Exhibit B). Ms. Allrid indicates that her company has purchased and installed tens of thousands of cross-view mirrors having the anti-glare material of the present invention. (See Exhibit C). Both Mr. Costello and Ms. Allrid state that the cross-view mirrors having the anti-glare tint are superior to those without the tint, and that the mirrors having the anti-glare tint were purchased for this reason in spite of their greater cost. (See Exhibits B and C). These letters further establish the nexus between the claimed invention and Rosco's commercial success.

9. Excerpts from the State of Florida's 2006 School Bus Specifications were also submitted with the July 11, 2008 Supplemental Amendment in this patent application. (See Exhibit D). The Florida Specifications were promulgated in direct response to the claimed invention. I worked with the State of Florida to permit ½ sphere cross-view mirrors to be

acceptable under the regulations because of the claimed tinted feature that Rosco provides as part of the cross-view mirror system. According to W. R. Schroyer, the former Director of Fleet Management for the Florida Department of Education, the State of Florida wrote the 2006 School Bus Specifications to require tinting on hemispherical cross-view mirrors after successful testing of Rosco's design. (*See* Exhibit E). Since then, the claimed tinted mirror design has become one of the two standard cross-view mirrors for Florida school buses. (*See id.*). The adoption of the ½ sphere cross-view mirror with the shaded design further establishes the nexus between the claimed invention and the commercial success.


10. A number of other companies also sell standard cross-view mirrors that do not include an anti-glare tint. These companies include Mirror Lite Company, Inc., Tiger Mirror Corp., and Lomar/Zomir. Accordingly, because alternative cross-view mirrors were available on the market, and Rosco was nevertheless able to sell significant quantities of the cross-view mirror having the claimed anti-glare tint, I conclude that the claimed feature of the anti-glare tint was responsible for the commercial success of the claimed invention, thereby establishing the nexus between the claimed invention and the commercial success.

11. With regard to cross-view mirrors that include an anti-glare tint, on information and belief, Mirror Lite Company is the only other company selling such a mirror, under the name "Solar Eclipse." On information and belief, Mirror Lite Company introduced its Solar Eclipse mirror in 2005. (*See* Exhibit F). Mirror Lite Company's introduction of its Solar Eclipse mirror four years after Rosco introduced its tinted Hawkeye mirror demonstrates that Mirror Lite Company was a follower in this area, and therefore, I believe that Mirror Lite Company copied the presently claimed invention.

12. In a recent advertisement, Mirror Lite Company stated that its Solar Eclipse mirror "can directly replace" Rosco's Hawkeye mirror models, including Rosco's tinted Hawkeye mirror sold under part number 3365T. (See Exhibit G). This advertisement further demonstrates that Mirror Lite Company copied the presently claimed invention. Accordingly, I also conclude that the claimed feature of the anti-glare tint was non-obvious in view of the prior art because others in the field are believed to have copied the claimed invention, thereby further establishing the nexus between the claimed invention and the commercial success.

13. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the patent in which this declaration is made.

Date: 4/7/09



Benjamin Englander